

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOREAN BARRERA, On Behalf of
Herself and All Others Similarly
Situated,

Plaintiff,

v.

PHARMAVITE, LLC, a California
limited liability company

Defendant.

CASE NO. 2:11-cv-04153-CAS (AGrx)

CLASS ACTION

~~PROPOSED~~ FINAL JUDGMENT AND
ORDER

1 Plaintiff Lorean Barrera and Defendant Pharmavite LLC (collectively, the
2 “Parties”) have entered into a Settlement Agreement and General Release
3 (“Settlement Agreement”) to settle this Litigation, which the Court preliminarily
4 approved on June 6, 2017 (Dkt. 423). Plaintiff Barrera has filed an Unopposed
5 Motion for Final Approval of Settlement and a Memorandum in Support of
6 Unopposed Motion for Final Approval of Settlement (collectively, “Motion for Final
7 Approval”). The Settlement Agreement, the exhibits thereto, and the exhibits to the
8 Motion for Final Approval, set forth the terms and conditions for a proposed
9 settlement and dismissal with prejudice of this Litigation.

10 Having reviewed the Settlement Agreement and its exhibits, the Motion for
11 Final Approval, the pleadings and other papers on file in this action, and statements
12 of counsel, and having held a Fairness Hearing on the fairness, adequacy, and
13 reasonableness of the settlement and considered all of the written submissions and
14 oral arguments made in connection with final settlement approval, the Court finds
15 that the Motion for Final Approval should be GRANTED and that this Final
16 Approval Order should be entered. Terms and phrases used in this Final Approval
17 Order shall have the same meaning ascribed to them in the Settlement Agreement.

18 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

19 1. For settlement purposes only, the Court certifies the following
20 Settlement Class:

21 All residents of the United States who purchased for personal use, and not
22 resale or distribution, a Covered Product between May 1, 2007 and June 6,
23 2017.

24 Specifically excluded from the Settlement Class are the following persons:

- 25 (i) Pharmavite and its respective affiliates, employees, officers, directors,
agents, and representatives, and their immediate family members;
- 26 (ii) Settlement Class Counsel and partners, attorneys, and employees of their
27 law firms; and
- 28 (iii) The judges who have presided over the Litigation or mediated the
Settlement, and their immediate family members.

2. For settlement purposes only, the Court appoints the following attorneys to act as Lead Settlement Class Counsel:

Elaine A. Ryan
BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, P.C.
2325 East Camelback Road, Suite
300
Phoenix, Arizona 85016
Telephone: (602) 274-1100

Stewart M. Weltman
SIPRUT, PC
17 North State Street, Suite 1600
Chicago, Illinois 60602
Telephone: (312) 236-0000

3. For settlement purposes only, the Court appoints the following attorneys as Settlement Class Counsel. Settlement Class Counsel are experienced in class litigation, including litigation of similar claims in other cases, and have fairly and adequately protected the interests of the Settlement Class:

Elaine A. Ryan BONNETT, FAIRBOURN, FRIEDMAN & BALINT, P.C. 2325 East Camelback Road, Suite 300 Phoenix, Arizona 85016 Telephone: (602) 274-1100	Stewart M. Weltman SIPRUT, PC 17 N. State Street Suite 1600 Chicago, Illinois 60602 Telephone: (312) 236-0000
Max A. Stein BOODELL & DOMANSKIS, LLC One North Franklin, Suite 1200 Chicago, IL 60606 Telephone: (312) 938-1670	Howard J. Sedran LEVIN FISHBEIN SEDRAN & BERMAN 510 Walnut Street Philadelphia, Pennsylvania 19106 hsedran@lfsblaw.com Telephone: (215) 592-1500
WESTERMAN LAW CORP. Jeff S. Westerman (94559) 1875 Century Park East, Suite 2200 Los Angeles, CA 90067 Tel: (310) 698-7880	

1 4. For settlement purposes only, the Court appoints the Named Plaintiff as
2 representative of the Settlement Class.

3 5. The Court finds that notice to the Settlement Class has been provided in
4 accordance with the Court's Preliminary Approval Order. This notice, in form,
5 method, and content, fully complied with the requirements of Rule 23 and due
6 process, constituted the best notice practicable under the circumstances, and
7 constituted due and sufficient notice to all persons entitled to notice of the settlement.

8 6. The settlement set forth in the Settlement Agreement is fair, reasonable,
9 adequate, and in the best interests of the Settlement Class. The Settlement Agreement
10 was arrived at through good-faith bargaining at arm's-length, without collusion,
11 conducted by counsel with substantial experience in prosecuting and resolving
12 consumer class actions. The settlement consideration provided under the Settlement
13 Agreement constitutes fair value given in exchange for the release of the Released
14 Claims against the Released Parties. The consideration to be provided to members of
15 the Settlement Class is reasonable, considering the facts and circumstances of the
16 numerous types of claims and affirmative defenses asserted in the Litigation, and in
17 light of the complexity, expense, and duration of litigation and the risks involved in
18 establishing liability and damages and in maintaining the class action through trial and
19 appeal. All terms of the settlement and Settlement Agreement are approved by this
20 Final Approval Order. The fact that this Final Approval Order specifically identifies
21 or summarily recapitulates some, but not other, provisions of the Settlement
22 Agreement does not modify any provision of the Settlement Agreement, nor does it
23 elevate or demote any provision vis á vis any other provision, nor does it create an
24 inference in that regard.

25 7. All Settlement Class members who failed to submit an objection to the
26 settlement in accordance with the deadline and procedure set forth in the Preliminary
27 Approval Order are deemed to have waived and are forever foreclosed from raising
28

1 the objection and are foreclosed from seeking any adjudication or review of the
2 Settlement Agreement by appeal or by any other means.

3 8. Any Settlement Class Member who has not submitted a complete and
4 timely Claim Form in compliance with the Settlement Agreement and the Court's
5 Preliminary Approval Order shall not be entitled to any benefits under the settlement,
6 but, unless they have opted out, nonetheless shall be barred by the Release and
7 provisions of the Settlement Agreement and the Final Order and Judgment.

8 9. The Court orders that any member of the Settlement Class who has not
9 submitted a timely, written request for exclusion from the Settlement Class (*i.e.*,
10 become an Opt-Out) as directed in the Preliminary Approval Order is bound by all
11 proceedings, orders, and judgments in the Litigation, even if such Settlement Class
12 Member has previously initiated or subsequently initiates individual litigation or other
13 proceedings encompassed by the Release (as set forth in Section VII Paragraphs D - F
14 of the Settlement Agreement).

15 10. The Parties, the Released Parties, and each Settlement Class member
16 have irrevocably submitted to the exclusive jurisdiction of this Court for any suit,
17 action, proceeding, or dispute relating in any way to, or arising out of, the Released
18 Claims, the Settlement Agreement, or this Final Judgment and Order.

19 11. The Parties are directed to consummate the Settlement Agreement in
20 accordance with its terms. The Parties and any and all Settlement Class members who
21 did not timely exclude themselves from the Settlement Class are bound by the terms
22 and conditions of the Settlement Agreement.

23 12. The requirements of Rule 23(a) and (b)(3) have been satisfied for
24 purposes of settlement. The Settlement Class is so numerous that joinder of all
25 members is impracticable; there are questions of law or fact common to the
26 Settlement Class; the claims of the Plaintiff are typical of the claims of the Settlement
27 Class; the Plaintiff has, and Settlement Class Counsel have fairly and adequately
28 protected the interests of the Settlement Class, and will fairly and adequately protect

1 the interests of the Settlement Class; and the questions of law or fact common to
2 Settlement Class members predominate over any questions affecting only individual
3 members.

4 13. Subject to the terms and conditions of the Settlement Agreement, this
5 Court hereby dismisses the Litigation with prejudice as to all Released Parties, without
6 fees or costs, except as provided in the Settlement Agreement.

7 14. By operation of this Final Judgment and Order, the Releasing Parties
8 release and forever discharge the Released Parties from the Released Claims, and the
9 Released Parties release and forever discharge Plaintiff and Settlement Class Counsel,
10 as set forth in Section IX, Paragraphs B and C of the Settlement Agreement.

11 15. Pharmavite shall not be required to recall, relabel, repackage, remove
12 from shelves, or pull or withdraw from distribution or inventory any Covered
13 Products that have been manufactured or shipped by Pharmavite prior to the date
14 starting 180 days after the Effective Date.

15 16. Neither the Settlement Agreement, nor any of its provisions, nor any of
16 the documents (including but not limited to drafts of the Settlement Agreement, this
17 Preliminary Approval Order, or the Final Order and Judgment), negotiations, or
18 proceedings relating in any way to the Settlement, shall be construed as or deemed to
19 be evidence of an admission or concession by any person, including Pharmavite, and
20 shall not be offered or received in evidence, or subject to discovery, in this or any
21 other action or proceeding except in an action brought to enforce its terms or except
22 as may be required by law or Court order.

23 17. The Court makes the following awards to Plaintiff and Settlement Class
24 Counsel:

25 a. **\$ 3,475,000.00** as attorneys' fees collectively to Bonnett, Fairbourn,
26 Friedman & Balint, P.C., Siprut, PC, Boodell & Domanskis, LLC, Levin
27 Sedran & Berman, and Westerman Law Corp.

28 b. **\$ 600,000.00** as costs collectively to Bonnett, Fairbourn, Friedman & Balint,

1 P.C., Siprut, PC, Boodell & Domanskis, LLC, Levin Sedran & Berman, and
2 Westerman Law Corp.

3 c. **\$ 10,000.00** as an incentive award to the Class Representative.

4 In accordance with the Settlement Agreement, these amounts shall be paid to the
5 escrow/trust account of Bonnett, Fairbourn, Friedman, & Balint, P.C. for further
6 distribution to Plaintiff and Settlement Class Counsel.

7 18. Without further order of the Court, the Parties may agree to reasonable
8 extensions of time to carry out any of the provisions of the Settlement Agreement.

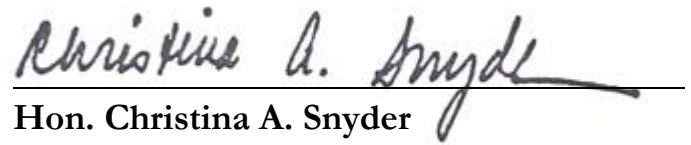
9 19. Neither Settlement Class Counsel's applications for an incentive award,
10 attorneys' fees, and reimbursement of expenses, nor any order or proceedings relating
11 to such applications, nor any appeal from any order relating thereto or reversal or
12 modification thereof, shall in any way affect or delay the finality of this Judgment, and
13 all such matters shall be considered separate from this Final Judgment and Order.

14 20. Without affecting the finality of this Final Judgment and Order, the
15 Court retains exclusive jurisdiction over this action, the Parties, and all Settlement
16 Class members to determine all matters relating in any way to the Final Judgment and
17 Order, the Preliminary Approval Order, or the Settlement Agreement, including but
18 not limited to the administration, implementation, interpretation, or enforcement of
19 such orders or Agreement.

20 21. Based upon the Court's finding that there is no just reason for delay of
21 enforcement or appeal of this Order notwithstanding the Court's retention of
22 jurisdiction to oversee implementation and enforcement of the Settlement Agreement,
23 the Court directs the Clerk to enter final judgment.

24 **IT IS SO ORDERED.**

25
26 **Dated: December 4, 2017**


27 **Hon. Christina A. Snyder**
28 **U.S. District Judge**